

STATE OF SOUTH CAROLINA	)	<b>BEFORE THE</b>
	)	
COUNTY OF RICHLAND	)	<b>CHIEF PROCUREMENT OFFICER</b>
	)	
In the Matter of Protest of:	)	
	)	<b>DECISION</b>
Cardinal Health 200, Inc.,	)	
	)	
	)	<b>CASE No: 2010-103</b>
Materials Management Office	)	
IFB NO. 5400001105	)	<b>POSTING DATE: March 29, 2010</b>
Statewide Term Contract for	)	
Medical Supplies	)	<b>MAILING DATE: March 29, 2010</b>
	)	

This matter is before the Chief Procurement Officer (CPO) pursuant to a February 18, 2010 letter of protest from Cardinal Health 200, Inc. (Cardinal). With this invitation for bids (IFB) issued on August 10, 2009, the Materials Management Office (MMO) attempts to procure two statewide term contracts to supply state agencies and political subdivisions that chose to use the term contracts with medical supplies.

After evaluating bids received, MMO posted an Intent to Award to Grove Medical Inc. (Grove) and Medline Industries Inc. (Medline). Cardinal and First Choice Medical Supply (First Choice) both protested the awards to Grove and Medline. Following hearings before the CPO, the CPO issued its December 29, 2009 decision (Case Nos: 2009-141 and 2009-144) granting the protests for First Choice and Cardinal as to Medline, canceling the award to Medline and dismissing the protest as to Grove. Since the IFB requires award to two bidders, the decision instructed the procurement officer to proceed with determining the second successful bidder in a manner consistent with both the decision and the South Carolina Consolidated Procurement Code (Code).

Pursuant to the above decision and the Code, the award to Medline was canceled on

January 21, 2010, and MMO posted an Intent to Award to First Choice on February 9, 2010. [Ex. 8] On February 18, 2010, Cardinal protested the intent to award to First Choice on the following grounds: 1) improper unit of measure and inaccurate pricing; and 2) improper preference calculation. MMO subsequently suspended the Intent to Award to First Choice on that date. [Ex. 9]

A hearing was held before the CPO on March 17, 2010. Appearing before the CPO were Cardinal, represented by M. Elizabeth Crum, Esquire, and Ariail B. Kirk, Esquire; First Choice, represented by E. Wade Mullins, Esquire; and MMO represented by John R. Stevens, State Contracting Officer.

### **NATURE OF PROTEST**

The letter of protest is attached and incorporated herein by reference.

### **DISCUSSION**

At the hearing, Mr. Stevens, on behalf of MMO, contended that MMO miscalculated the Resident Vendor Preference (RVP) found in S.C. Code Ann. 11-35-1524 (Supp. 2008), *substantially amended* by 11-35-1524 (Supp. 2009). Theresa Watts, the MMO procurement officer, testified that she believed the error occurred when irrelevant bids were not removed prior to the calculations.<sup>1</sup> Ms. Watts then explained her corrected recalculation reflected that First Choice's bid was no longer the lowest responsive and responsible bidder for the second award. [Ex. 10] Accordingly, Mr. Stevens argued that the award to First Choice was based upon an error related to this miscalculation of the preferences in the bid tabulations. [Ex. 6]

Cardinal's position in this regard was consistent with MMO's. First Choice did not oppose MMO's position or Ms. Watts' recalculation.

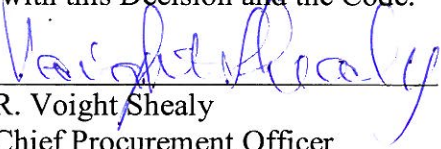
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<sup>1</sup> This procurement was under the prior preferences statute, which required the preferences to be applied against the other bids therefore making them relevant. For solicitations issued after the first Monday in September 2009, the amended statute applies.

Therefore, I find that MMO miscalculated the preferences in this regard and the Intent to Award to First Choice was erroneous. Based on this finding, it is unnecessary to reach the remaining issues raised in Cardinal's protest.

#### **DETERMINATION**

Cardinal's protest of the Intent to Award to First Choice is granted, and the Intent to Award to First Choice is canceled. Accordingly, the procurement officer is instructed to proceed with this procurement in a manner consistent with this Decision and the Code.

  
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R. Voight Shealy  
Chief Procurement Officer  
for Supplies and Services

  
\_\_\_\_\_  
Date

Columbia, South Carolina

## STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

The South Carolina Procurement Code, in Section 11-35-4210, subsection 6, states:

(6) Finality of Decision. A decision pursuant to subsection (4) is final and conclusive, unless fraudulent or unless a person adversely affected by the decision requests a further administrative review by the Procurement Review Panel pursuant to Section 11-35-4410(1) within ten days of posting of the decision in accordance with subsection (5). The request for review must be directed to the appropriate chief procurement officer, who shall forward the request to the panel or to the Procurement Review Panel, and must be in writing, setting forth the reasons for disagreement with the decision of the appropriate chief procurement officer. The person also may request a hearing before the Procurement Review Panel. The appropriate chief procurement officer and an affected governmental body shall have the opportunity to participate fully in a later review or appeal, administrative or judicial.

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Copies of the Panel's decisions and other additional information regarding the protest process is available on the internet at the following web site: [www.procurementlaw.sc.gov](http://www.procurementlaw.sc.gov)

FILE BY CLOSE OF BUSINESS: Appeals must be filed by 5:00 PM, the close of business. *Protest of Palmetto Unilect, LLC*, Case No. 2004-6 (dismissing as untimely an appeal emailed prior to 5:00 PM but not received until after 5:00 PM); *Appeal of Pee Dee Regional Transportation Services, et al.*, Case No. 2007-1 (dismissing as untimely an appeal faxed to the CPO at 6:59 PM).

FILING FEE: Pursuant to Proviso 83.1 of the 2009-2010 General Appropriations Act, "[r]equests for administrative review before the South Carolina Procurement Review Panel shall be accompanied by a filing fee of two hundred and fifty dollars (\$250.00), payable to the SC Procurement Review Panel. The panel is authorized to charge the party requesting an administrative review under the South Carolina Code Sections 11-35-4210(6), 11-35-4220(5), 11-35-4230(6) and/or 11-35-4410(4). . . . Withdrawal of an appeal will result in the filing fee being forfeited to the panel. If a party desiring to file an appeal is unable to pay the filing fee because of hardship, the party shall submit a notarized affidavit to such effect. If after reviewing the affidavit the panel determines that such hardship exists, the filing fee shall be waived." 2008 S.C. Act No. 23, Part IB, § 83.1. PLEASE MAKE YOUR CHECK PAYABLE TO THE "SC PROCUREMENT REVIEW PANEL."

LEGAL REPRESENTATION: In order to prosecute an appeal before the Panel, a business must retain a lawyer. Failure to obtain counsel will result in dismissal of your appeal. *Protest of Lighting Services*, Case No. 2002-10 (Proc. Rev. Panel Nov. 6, 2002) and *Protest of The Kardon Corporation*, Case No. 2002-13 (Proc. Rev. Panel Jan. 31, 2003).